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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BANA MOUWAKEH,

Plaintiff,

v.

COUNTY OF SAN DIEGO, San Diego
Sheriff BILL GORE, San Diego
Sheriff's Deputy STEVEN DUNNING,
San Diego Sheriff's Deputy
AUGUSTIN ROSAS, JR., San Diego
Sheriff's Deputy YVAN ROGERS, and
DOES 1-10, inclusive,

16

Defendants.

Case No. 15CV2372 W (KSC)

SECOND AMENDED COMPLAINT
FOR DAMAGES AND VIOLATIONS
OF CIVIL RIGHTS

DEMAND FOR JURY TRIAL

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

Plaintiff BANA MOUWAKEH hereby file the following First Amended
Complaint for Damages and Violations of her federal Civil Rights against
Defendants COUNTY OF SAN DIEGO, San Diego Sheriff BILL GORE, and
SDSO deputies AUGUSTIN ROSAS, JR., STEVEN DUNNING and YVAN
ROGERS and DOES 1–10, inclusive.

JURISDICTION AND VENUE

1 This Court has subject matter jurisdiction over Plaintiffs' federal
 2 Constitutional claims brought under Title 42 United States Code ("U.S.C.") section
 3 1983 under 28 U.S.C. sections 1331, 1343(1), (2), (3), and (4). and 2201. Venue in
 4 this Court is proper because the acts complained of occurred in the County of San
 5 Diego, which is located in the Southern District of California.

6 This action at law for money damages arises under Title 42 U.S.C. Section 1983
 7 and the United States Constitution, the laws of the State of California and common law
 8 principles to redress a deprivation under color of state law of rights, privileges and
 9 immunities secured to Plaintiffs by said statutes, and by the First, Fourth, and
 10 Fourteenth Amendments of the United States Constitution.

11 **PARTIES**

12 1. Plaintiff BANA MOUWAKEH is a United States citizen who, at all
 13 times relevant to this Complaint, resided in the County of San Diego.

14 2. Defendant COUNTY OF SAN DIEGO (hereinafter "COUNTY") is a
 15 municipal corporation duly organized under the laws of the State of California
 16 located in the County of San Diego. The San Diego Sheriff's Department
 17 (hereinafter "SDSO") is the chief law enforcement agency of the COUNTY.

18 3. At some times relevant to this Complaint, Defendant BILL GORE
 19 was the Sheriff of the SDSO and a policy-maker.

20 4. At all times relevant to this complaint, Defendant STEVEN
 21 DUNNING was a deputy Sheriff with the SDSO and an employee of the
 22 COUNTY. At all times mentioned herein, Defendant DUNNING acted under
 23 color of authority and pursuant to the course and scope of his employment and/or
 24 agency with the COUNTY.

25 5. At all times relevant to this Complaint, Defendant AUGUSTIN
 26 ROSAS, JR. was a deputy Sheriff with the SDSO and an employee of the
 27 COUNTY. At all times mentioned herein, Defendant ROSAS acted under color of
 28 authority and pursuant to the course and scope of his employment and/or agency

1 with the COUNTY.

2 6. At all times relevant to this Complaint, Defendant YVAN ROGERS
3 was deputy Sheriff with SDSO and an employee of the COUNTY. At all times
4 mentioned herein, Defendant ROGERS acted under color of authority and pursuant
5 to the course and scope of his employment and/or agency with the COUNTY.

6 7. Defendant DOES 1-10 is unknown individuals, corporations,
7 municipalities, and/or other legal entities whose true names, identities and
8 capacities are unknown at this time.

9 8. Plaintiff is informed, believes, and thereon alleges, that each of said
10 fictitiously named DOE Defendants is responsible in some manner for the acts,
11 omissions, and damages alleged herein. Plaintiff is unaware of the true names and
12 capacities of the DOE Defendants, and, therefore, sues these Defendants under
13 such fictitious names. Plaintiff is furthermore informed, believes, and thereon
14 alleges, that each of said fictitiously named Defendants was the agent, servant, and
15 employee, of each and every other Defendant acting within the course and scope of
16 his or her agency and employment, and with the knowledge, ratification, and
17 consent, of each respective principal. Plaintiff will seek leave to amend this
18 Complaint when their true names and capacities have been ascertained.

19 **GOVERNMENT LIABILITY**

20 9. Plaintiff alleges that all Defendants carried out the acts complained of
21 in their individual and official capacities, in the course and scope of their
22 employment, and under color of law. All individual Defendants are sued both in
23 their individual and official capacities.

24 10. Regarding all actions and causes of action herein alleged and stated,
25 all governmental defendants (including all DOE defendants) violated rights held by
26 Plaintiff that were clearly established and which they had a mandatory duty to
27 uphold. No reasonable official similarly situated to any of the Defendants could
28 have believed that his/her conduct was lawful or within the bounds of reasonable

1 discretion. All individual Defendants, including all individual DOE Defendants,
 2 thus lack immunity from suit or liability. This extends both to statutorily created
 3 immunity and to the judicially created doctrine of “qualified immunity”.

4 11. Defendant CITY is also liable for the violations of Plaintiffs’ federal
 5 constitutional rights brought under 42 U.S.C. section 1983 based upon Plaintiffs’
 6 *Monell* cause of action. The bases for the CITY’s liability in this context include,
 7 but are not limited to, the SDSO’s supervisors’ and policy-makers ratification of
 8 the illegal and unconstitutional conduct of their subordinate SDSO officers, and the
 9 fact that the violation of Plaintiff’s rights was the result of an actual or *de facto*
 10 policy that encouraged and/or tolerated the violations of citizens’ rights by SDSO
 11 officers. This liability is direct and is based on the causes of action brought against
 12 the policy-making Defendants (to wit, current SDSO Chief BLL GORE in said
 13 Defendant’s official capacity.

14 12. Plaintiff is informed and believes and, on the basis of such information and
 15 belief, alleges that Defendants COUNTY, GORE, and DOES 1-10, with deliberate
 16 indifference, gross negligence, and reckless disregard for the safety, security, and
 17 constitutional and statutory rights of Plaintiff and all persons similarly situated, maintained,
 18 enforced tolerated, permitted, acquiesced in, and applied policies, practices,
 19 or customs or, amongst other things:

20 a. Subjecting citizens to unreasonable and outrageous seizures of
 21 their persons;

22 b. Selecting, retraining, and assigning deputies with demonstrable
 23 propensities for excessive force, violence, and other misconduct, failing to discipline
 24 deputies who falsely arrest citizens, use excessive force against citizens and/or retaliate against citizens for
 25 exercising their First Amendment rights, and even promoting such deputies even after it is
 26 discerned they violated the Constitutional rights of citizen creating a substantial risk of
 27 serious injury so widespread as to constitute a custom and practice resulting in deliberate
 28 indifference to the risk of harm; Specifically, Sheriff GORE defending an SDSO deputy’s
 use of a Taser on 13-year-old Jeremy Banks; Specifically, taking no action against SDSO

deputies who falsely arrested 61 year-old cancer patient Deborah Little; Specifically, Sheriff GORE denying there was a lack of training of SDSO Deputy Jeffrey Grey who attacked a man with Downs' Syndrome; specifically, Sheriff GORE condoning SDSO Deputy Jeffrey Cruz's beating of a patron of Harrah's California Resort when the man was in handcuffed; specifically, Sheriff GORE condoning the repeated tasing of citizen Marcial Torres to the point he went into cardiac arrest and had to have both legs amputated. GORE conducted no internal investigation and Deputy Haddad was returned to regular duties; specifically, GORE condoning a false arrest committed by SSDPS Deputy Jason Philpot, which was ultimately dismissed by a judge. Philpot had repeatedly punched the citizen in the face and fractured the eye socket. GORE promoted Philpot to the Sheriff's training division, which instructs deputies on use of force; specifically, that under GORE, use of force complaints were up by 60 % from 2010 while there were no more arrests, indicating a policy of condoning excessive force.

c. Failing to adequately train, supervise, and control police officers in the arts of law enforcement;

d. Failing to adequately discipline police officers involved in misconduct and, in fact, actively promoting deputies who have engaged in false arrest and excessive force;

e. Condoning and encouraging police officers in the belief that they can violate the rights of persons such as the Plaintiff in this action with impunity and that such conduct will not adversely affect their opportunities for promotion and other employment benefits.

13. Plaintiff is informed and believes and, on the basis of such information and belief, alleges that Defendants COUNTY and GORE, and DOES 1-10 ordered, authorized, acquiesced in, tolerated, or permitted Defendants DUNNING and ROSAS, ROGERS and DOES 1-10 to engage in the unlawful and unconstitutional actions, policies, practices, and customs set forth in the foregoing paragraph and ratified that conduct.

14. Defendants DUNNING', ROSAS's and ROGERS' conduct alleged herein constitutes a pattern of intimidation, illicit law enforcement behavior, and statutory and

1 constitutional violations based either on a deliberate plan by Defendants COUNTY, and
 2 GORE, and DOES 1-10 or on Defendants COUNTY and GORE, and DOES 1-10,
 3 deliberate indifference, gross negligence, or reckless disregard, to the safety, security, and
 4 constitutional and statutory violations of Plaintiff and all persons similarly situated.

5 15. Plaintiff is informed and believes, and on the basis of such
 6 information and belief, alleged that Defendant COUNTY subsequently ratified the acts
 7 and related acts of GORE, DUNNING, ROGERS and ROSAS, and DOES 1-10,
 8 including the acts that are the subject of this lawsuit, against a number of persons
 9 involved in this and other events by, amongst other things, its County officials failing to
 10 take any actions in response to being fully informed of the actions of its deputies.

11 16. Plaintiff is informed and believes, and based on that on information and
 12 belief, alleges that over a number of years San Diego Sheriff's Deputies have engaged in
 13 a number of acts of misconduct that have been condoned, ignored, and otherwise
 14 permitted to continue by the San Diego Sheriff's Department through its supervisors and
 15 Defendant GORE. Some of these acts have been brought to the attention of the San
 16 Diego Board of Supervisors, which consistently had chosen to do nothing about them.
 17 Plaintiff is informed and believes and, on the basis of such information and belief, alleges
 18 that it is well established that the COUNTY, have no intentions to stop the ongoing
 19 misconduct by Sheriff Deputies.

20 17. Plaintiff is informed and believes and thereon alleges that each of the
 21 Defendants designated as a DOE is intentionally and negligently responsible in some
 22 manner for the events and happenings herein referred to, and thereby proximately caused
 23 the injuries for the events and happenings referred to, and thereby proximately caused the
 24 injuries and damages as herein alleged. The true names and capacities of DOES 1 through
 25 50, inclusive, and each of them, are not now known to Plaintiff who therefore sued said
 26 Defendants by such fictitious names and will be added to this action as provided by
 27 California Code of Civil Procedure §484.

28 18. Defendant COUNTY at all times herein mentioned is an agency of
 Defendant is a "Person" subject to suit within the meaning of 42 U.S.C. §1983 under
Monell v. Department of Social Services (1978) 436 U.S. 658, 691. Under

1 California Government Code §815.2 Defendant COUNTY is liable for any and all wrongful
2 acts hereinafter complained of committed by any of the individual officer Defendants.

3 19. All defendants are jointly and severally liable for all damages awarded
4 (except punitive damages). Under California Government Code section 825(a), the
5 CITY is obligated to pay any compensatory damages and costs awarded against
6 their employees.

7 **GENERAL ALLEGATIONS**

8 20. On October 11, 2013 defendants ROSAS, ROGERS and DUNNING were
9 conducting speed enforcement stops West San Marcos Boulevard in the City San
10 Marcos. Defendant ROSAS was training Defendant DUNNING.

11 21. Defendant ROSAS claimed to have “visually” calculated Plaintiff’s car
12 traveling 70 miles per hour in a 50 miles per hour zone and then claimed to have
13 confirmed with his laser, which he wrote in his official report. In fact, Plaintiff was not
14 traveling at that speed because there was a blockage in the road ahead of her involving
15 another car and two other officers which would have prevented her from traveling
16 at that pace.

17 22. Defendant ROSAS stepped into the road and flagged Plaintiff to pull
18 over. Plaintiff complied. Plaintiff provided her driver’s license, registration and proof
19 of insurance to Defendant ROSAS as he requested. Defendant ROSAS told Plaintiff
20 she had been speeding and wrote in his report that he showed Plaintiff his laser, which
21 he never did. Plaintiff informed Defendant ROSAS that she was not traveling at the
22 rate of speed he alleged, and requested that he provide his full name to her, which he
23 declined to do.

24 23. Plaintiff asked Defendant ROSAS several times for his name and badge
25 number, but he refused to respond to her inquiries. Defendant ROSAS took Plaintiff’s
26 identifying information and walked back to his patrol car to write a ticket.

27 24. Defendant ROSAS, accompanied by defendants DUNNING and
28 ROGERS returned to Plaintiff’s car. Plaintiff had against asked Defendant ROSAS to

1 provide his full name and badge number to her, which he declined to do. As Plaintiff
2 reached with her forefinger to uncover Defendant's badge, which was hidden
3 underneath a traffic safety vest, Defendant ROSAS forcefully grabbed Plaintiff's arm
4 and said, "That's it, you're going to jail," leaned his body into her car to unlock and
5 open it from inside, climbed into her car, forcibly grabbed her. Defendant ROGERS
6 grabbed Plaintiff under her armpit and defendants ROSAS and ROGERS together
7 dragged Plaintiff out of her car and dropped her to the ground. Defendant DUNNING
8 immediately handcuffed Plaintiff. Plaintiff had never actually touched the deputy's
9 vest.

10 25. During the initial contact with Defendant ROSAS, Plaintiff told him she
11 was disabled, that she had just had knee surgery and was pending hip replacement
12 surgery. The physical attack by defendants ROSAS, ROGERS, and DUNNING re-
13 injured Plaintiff's knee requiring her to put off her hip ~~replacement~~ surgery so her
14 orthopedic doctor could perform surgery on the damage on her knee inflicted by the
15 deputy defendants. Plaintiff's handcuffs were so tight around her wrists that she had
16 numbness in her wrists for many months after the incident.

17 26. Plaintiff was arrested for a violation of California Penal Code sec. 243(b)
18 (Battery on a Peace Officer) and Penal Code sec. 148(a) (Resisting and Delaying and
19 Officer). Defendant DUNNING wrote the ticket and named Defendant ROSAS as the
20 victim. Defendant DUNNING did not issue Plaintiff a speeding ticket. There was no
21 probable cause to arrest Plaintiff on speeding, or the Penal Code charges.

22 27. Plaintiff was dragged to a patrol car where she was placed in the back
23 seat. She was taken to the sheriff's substation where she underwent the indignity of
24 being photographed and fingerprinted. Defendants held Plaintiff for nearly three
25 hours. They did not provide her medical treatment, although she complained of severe
26 pain. Three hours after she was falsely arrested, Plaintiff was released on her
27 promise to appear in court.

28 28. Defendants ROSAS, DUNNING and ROGERS all drafted reports which
contained false descriptions of Plaintiff being agitated and non-compliant with

1 Defendant ROSAS. Defendants ROSAS, DUNNING and ROGERS each falsified their
 2 reports to state that Plaintiff had reached out and grabbed Defendant ROSAS vest,
 3 which she did not do, in order to cover up their false arrest and excessive force
 4 perpetrated on Plaintiff.

5 29. In November 2013 a criminal complaint was filed by the San Diego
 6 District Attorney's office charging Plaintiff with a violation of Penal Code sec. 243(b)
 7 and 148(a). The Office of the District Attorney thereafter dismissed all charges
 8 against Plaintiff.

9 **FIRST CAUSE OF ACTION**

10 **42 U.S.C. § 1983 - Unlawful Seizure, Arrest, and Detention**

11 **(Against Defendants DUNNING, ROSAS and, and DOES 1-25)**

12 30. Plaintiff hereby incorporates the preceding paragraphs by reference as
 13 though each were set forth herein in full.

14 31. The Fourth Amendment to the United States Constitution states:

15 The right of the people to be secure in their persons, houses, papers,
 16 and effects, against unreasonable searches and seizures, shall not be
 17 violated, and no warrants shall issue, but upon probable cause,
 18 supported by oath or affirmation, and particularly describing the place
 19 to be searched, and the persons or things to be seized.

20 32. On October 11, 2013, SDSO deputies ROSAS, DUNNING and
 21 ROGERS and DOES 1-10 illegally seized, detained, and arrested Plaintiff without
 22 probable cause, reasonable suspicion, and/or a warrant, and used excessive force
 23 upon her causing serious injury resulting in surgery. In so doing, the SDSO deputy
 24 Defendants deprived Plaintiff of her constitutional rights under the Fourth
 25 Amendment to the United States Constitution. The injuries sustained by Plaintiff
 26 were as a direct result of the widespread refusal to properly train deputies on the
 27 proper way to arrest at traffic stops, what force may or may not be used, and even
 28 promoting officers who have engaged before in false arrest and excessive force.
 This created such a substantial risk of serious harm to citizens as stated above that

County and GORE created, by the sheer number of events where they took no action to correct the constitutional violations of their deputies, a custom of deliberate indifference to those actions.

33. In committing the acts and omissions alleged herein, the SDSO deputy Defendants acted in the course and scope of their employment, and thereby acted under color of law. At no time did Plaintiff give valid consent to Defendants' unlawful actions, and the rights Defendants were violating were clearly established.

34. In committing the acts and omissions alleged herein, the SDSO deputy Defendants acted with malice, oppression and fraud. Accordingly, Plaintiffs are entitled to obtain punitive damages from SDPD Officer Defendants in an amount sufficient to punish and deter such conduct, according to proof at the time of trial.

SECOND CAUSE OF ACTION

42 U.S.C. § 1983 – Excessive Force

(Against Defendants ROSAS, DUNNING, ROGERS and DOES 1-10)

35. Plaintiff hereby incorporates the preceding paragraphs by reference as though each were set forth herein in full.

36. In effectuating their unlawful arrest and/or detention of Plaintiff, defendants ROGERS, ROSAS and DUNNING, and DOES 1-10 used unreasonable and excessive force upon Plaintiff when they grabbed her by her arms, dragged her out of her car and dropped her on the ground, handcuffed her, lifted her off her feet, and dragged her to the patrol car, after they injured her knee and hip preventing her from being able to walk without assistance.

37. Even if the arrest of Plaintiff had been legal, which it was not, the means used by SDSO deputy Defendants to effectuate the arrest constituted excessive force and unreasonable force, thereby violating Plaintiff's clearly established rights under the Fourth and Fourteenth Amendments of United States

1 Constitution.

2 38. In effectuating their unlawful arrest and/or detention of Plaintiff
3 BANA MOUWAKEN on October 11, 2013, SDSO Officer Defendants used
4 unreasonable and excessive force upon Plaintiff when they grabbed her by her
5 arms, dragged her out of her car and dropped her on the ground, handcuffed her,
6 lifted her off her feet, and dragged her to the patrol car, after they injured her knee
7 and hip preventing her from being able to walk without assistance.

8 39. Even if the arrest of Plaintiff had been legal, which it was not, the
9 means used by SDSO deputy Defendants to effectuate the arrest constituted
10 excessive force and unreasonable force, thereby violating Plaintiff's clearly
11 established rights under the Fourth and Fourteenth Amendments of United States
12 Constitution.

13
14 40. At no time did Plaintiff give valid consent to any of SDSO deputy
15 defendants' unlawful actions described herein. Plaintiff further alleges that
16 all defendants acted in the course and scope of their employment with the SDSO,
17 thereby acting under color of law.

18 41. Plaintiff suffered pain, tenderness, discomfort, and contusions, as a
19 result of being aggressively dragged out of the car and dropped on the asphalt.
20 Additionally, the force used against her when she was dropped on the asphalt was
21 so severe it reinjured a knee that had recently been operated on requiring her to
22 have a second knee surgery to repair damage done by the excessive force.
23 Furthermore, a scheduled hip replacement surgery had to be put off in order to
24 accommodate the emergency knee repair surgery required as a result of the injuries
25 sustained when the Defendant deputies used excessive force. Also, Plaintiff
26 sustained numbing of her hands as a result of the handcuffs being placed too tightly
27 on her wrists.

28 42. At no time could a reasonable officer in the position of SDSO deputy

Defendants have believed that Plaintiff posed a threat either to the officers or anyone else, nor could a reasonable officer have believed that the amount and degree of force SDSO deputy Defendants employed was reasonably necessary to effectuate an arrest.

43. As such, the degree of force SDSO Deputy Defendants used against Plaintiff was without probable cause, reasonable grounds, or other justification, thereby violating Plaintiff's dignity and bodily integrity, invading their privacy, and proximately and foreseeably causing them damage, injury, and loss.

44. Moreover, since no force of any kind was justified, SDSO deputy Defendants' use of any force against Plaintiffs was a *per se* violation of their constitutional rights.

45. In committing the acts alleged herein, SDSO deputy Defendants acted with malice and oppression. Plaintiff therefore is entitled to punitive damages against SDSO deputy Defendants in an amount sufficient to punish and deter such conduct, according to proof at the time of trial.

THIRD CAUSE OF ACTION

RETALIATION FOR EXERCISE OF FIRST AMENDMENT

(Against Defendants ROSAS, DUNNING, ROGERS and DOES 1-10)

46. Plaintiff hereby incorporates the preceding paragraphs by reference as though each were set forth herein in full.

47. During the time of the initial traffic stop, Plaintiff informed Deputy ROSAS that she had not been speeding, and that she was driving with the flow of traffic. She also informed him she was disabled, in that she had just had a knee operation and was pending a hip replacement surgery so that it was difficult for her to speed even had she wished to do so. She repeatedly asked that ROSAS identify himself, as he had no nametag visible, as is mandated by San Diego Sheriff's Department policy and procedures. ROSAS refused to provide his name to her or reveal his hidden nametag, took her license, and walked away to consult with

1 DUNNING and ROGERS.

2 48. Upon returning to the car, Plaintiff again demanded that ROSAS
3 identify himself, which he repeatedly refused to do. When Plaintiff reached towards
4 ROSAS to uncover his hidden badge, ROSAS grabbed Plaintiff and dragged her out
5 of the car in retaliation for her speech.

6 49. Those SDSO Officer Defendants named in this cause of action who
7 conspired with, verbally encouraged, and/or aided and abetted, and/or witnessed
8 SDSO Deputy ROSAS and were in a position to stop the violation of Plaintiff's
9 rights but failed to do so are also liable for the violation of Plaintiffs' First
10 Amendment rights.

11 50. In committing the acts alleged herein, SDPD Officer Defendants acted
12 with malice and oppression. Plaintiff therefore is entitled to punitive damages
13 against SDSO deputy Defendants in an amount sufficient to punish and deter such
14 conduct, according to proof at the time of trial.

15 **FOURTH CAUSE OF ACTION**

16 ***Monell Claim – 42 U.S.C. § 1983***

17 **(Against Defendant COUNTY, San Diego Sheriff BILL GORE and DOE**
18 **SDSO Policy Making Defendants)**

19 51. Plaintiffs hereby incorporate the preceding paragraphs by reference as
20 though each were set forth herein in full.

21 52. As set forth herein above, the SDSO deputy Defendants violated a
22 number of Plaintiff's constitutional rights. These included violations of the First,
23 Fourth and Fourteenth Amendments to the Constitution of the United States.
24 These actions by SDPD Officer Defendants were part of a wider pattern and
25 practice that was approved and encouraged by the SDPD.

26 53. The physical abuse and meritless arrest of citizens such as Plaintiff
27 were consistent with the custom and practice endorsed, promulgated, and/or
28 tolerated by former San Diego Sheriff and all supervisory DOE Defendants with

1 final policy-making authority.

2 54. This custom and practice, and the ratification by the supervisory
3 Defendants with final policy-making authority named herein of the illegal actions
4 performed by rank-and-file SDSO deputies pursuant to this policy, was the moving
5 force behind the SDSO deputy Defendants' violation of Plaintiff's rights that
6 occurred on October 11, 2013.

7 55. Accordingly, the COUNTY is liable for the deprivation of Plaintiff's
8 constitutional rights by the SDSO deputy Defendants under *Monell v. Department*
9 *of Social Services of the City of New York* (1978) 436 U.S. 658, and its progeny,
10 which hold that a municipal entity may be held liable for violations of
11 Constitutional rights committed by its law enforcement officers if the violation was
12 based on either: (1) a widespread practice that, although not authorized by written
13 law or express municipal policy, is "so permanent and well settled as to constitute
14 a custom or usage" with the force of law, or, (2) the fact that the illegal and
15 unconstitutional conduct was ratified by an individual with final policy-making
16 authority.

17 56. Here both bases for municipal liability are present.

18 57. First, Plaintiff is informed and believes, and thereon allege, that the
19 SDSO had a departmental policy, custom, or practice (which was promulgated,
20 encouraged, and/or tolerated by the Defendants named herein, to wit, SDSO
21 supervisors and those with policy-making authority) of harassing and physically
22 abusing citizens, and arresting them without probable cause in violation of these
23 individual's civil rights.

24 58. The decision to illegally arrest Plaintiff on October 11, 2013, was part
25 and parcel of the illegal behavior encouraged by Defendant San Diego Sheriff
26 GORE, and all supervisory DOE Defendants with final policy-making authority.

27 59. Second, when confronted with the illegal arrest of, and excessive
28 force used against Plaintiff, Defendants and all supervisory DOE SDSO

1 Defendants with final policymaking authority, not only failed to take corrective
2 action, but also ratified the illegal conduct of the SDSO deputy Defendants and
3 other DOE Defendants.

4 60. Overall, the pattern and practice of the SDSO and of the individuals
5 with final policymaking authority within it (including, but not limited to, former
6 San Diego Sheriff GORE and all supervisory DOE Defendants with final policy-
7 making authority) was such that there was a permanent and settled culture, policy,
8 and/or practice, which encouraged the false arrest and imprisonment of, and the use
9 of excessive force against, citizens like Plaintiff. This pattern and practice was a
10 substantial factor in causing the injuries and damages suffered by Plaintiff in the
11 incident alleged herein.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Properly Train – Violation of 42 U.S.C. § 1983**

14 **(Against Defendant COUNTY, San Diego Sheriff GORE, and DOE SDSO** 15 **Policy Making Defendants)**

16 61. Plaintiff re-alleges all prior paragraphs of this Complaint and
17 incorporate said paragraphs herein by reference.

18 62. Defendants, San Diego Sheriff GORE and all supervisory and/or
19 policy-making SDSO DOE Defendants, as a matter of custom, practice, and policy,
20 failed to maintain adequate and proper training as to the Constitutional rights of
21 citizens and arrestees, to prevent the consistent and systematic arrests without
22 probable cause, the use of excessive force, the falsifying of reports, and extra-
23 judicial punishment by SDSO deputies.

24 63. Defendants, San Diego Sheriff GORE and all supervisory and/or
25 policy-making SDSO DOE Defendants failed to provide adequate training to their
26 deputies on the requirement that citizens only be arrested based on probable cause
27 or a valid warrant.

28 64. Defendants, San Diego Sheriff GORE and all supervisory and/or

1 policy-making SDSO DOE Defendants failed to provide adequate training to their
2 deputies on the appropriate, reasonable, and/or legally permissible amount of force
3 that may be used when effectuating an arrest.

4 65. Defendants San Diego Sheriff GORE and all supervisory and/or
5 policy-making SDSO DOE Defendants failed to provide adequate training to their
6 deputies on the subject of police reports: to wit, they failed to properly train their
7 offices in the SDSO that officers must file truthful and complete reports that do not
8 contain false statements and/or omissions of material facts.

9 66. At the time Defendants San Diego Sheriff GORE and all supervisory
10 and/or policy-making SDSO DOE Defendants failed to properly train their
11 subordinate deputies, they knew, or in the exercise or care should have known, that
12 their failure to properly train their deputies was likely to result in citizens of the
13 County of San Diego suffering the exact type of violations of their Constitutional
14 rights which Plaintiff suffered in this case.

15 67. Therefore, Defendants San Diego Sheriff GORE and all supervisory
16 and/or policy-making SDSO DOE Defendants with deliberate indifference,
17 disregarded a duty to protect the public from official misconduct.

18 68. The failure by Defendants San Diego Sheriff GORE and all applicable
19 SDPD DOE Defendants, to promulgate or maintain constitutionally adequate
20 training was done with deliberate indifference to the rights of Plaintiff and others in
21 her position.

22 69. The constitutionally infirm lack of adequate training as to SDSO
23 deputy Defendants, all law enforcement officers, caused Plaintiff to suffer the
24 damages alleged herein.

25 70. As a result of actions of Defendants San Diego Sheriff GORE and al
26 supervisory and/or policy-making SDSO DOE Defendants and all applicable SDSO
27 DOE Defendants, Plaintiff suffered the physical, economic and psychological
28 injuries alleged herein.

71. As a direct consequence of the failure of Defendants San Diego Sheriff GORE and all supervisory and/or policy-making SDSO DOE Defendants to properly train their deputies, Plaintiff was falsely arrested, SDSO deputy Defendants used excessive force against her, SDSO deputy Defendants retaliated against Plaintiff for exercising her First Amendment rights, and the SDSO Deputy Defendants named herein filed false and misleading police reports with respect to Plaintiffs. These acts and omissions by Defendants, and each of them, were a proximate cause of the injuries and damages to Plaintiffs as herein alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- (1) For general and special compensatory damages (including direct, indirect, and emotional damages), presumed damages, and nominal damages, against all Defendants, in an amount to be determined by the trier of fact.
- (2) For punitive and exemplary damages against all defendants except the COUNTY and in an amount to be determined by the trier of fact.
- (3) For past and future medical expenses, in an amount to be determined by the trier of fact;
- (4) For reasonable attorney's fees and costs and expenses of litigation, pursuant to 42 United States Code sections 1983-1988, and any and all other relevant statutory or case law.
- (5) For any and all other relief, including interest and/or injunctive relief, to which Plaintiff may be entitled under law or equity and which this Court may determine is appropriate under the facts of this case.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a jury trial on each and every cause of action set forth in her Complaint.

1 Dated: March 2, 2016

2 By: /s/ Mary Frances Prevost
3 MARY FRANCES PREVOST
4 Attorneys for Plaintiff
5 BANA MOUWAKEH
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